IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1143 of 2007

Lalitha .. Petitioner

Vs.

1. The Secretary to Government (Home)
   Prohibition and Excise Department
   Secretariat,
   Fort St.George, Chennai-9.

2. The Commissioner of Police
   Greater Chennai
   Egmore, Chennai-8. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.V.Ganesh
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

The second respondent herein clamped an order of detention as against the detenu - Mahesh, son of Rajendran, as the said authority arrived at the subjective satisfaction that the said detenu is a Goonda and he has to be detained under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Officers, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982).

2. Challenging the abovesaid detention, the mother of the detenu has come forward with the present Habeas Corpus Petition seeking a writ of habeas corpus to call for the records pertaining to the detention order passed against the detenu by the second respondent in BDFGISSV.No.249 of

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2007, dated 16.6.2007, set aside the same and to direct the respondents to produce the body of the detenu, now detained at Central Prison, Puzhal, before this Court and to set him at liberty.

3.1. The order of detention dated 16.6.2007 was passed on the basis of ground case in Crime No.488 of 2007 for alleged commission of offences under Sections 341, 336, 397 and 506(2) IPC, complaint of which was lodged by one Rajendran. According to Rajendran, on 27.5.2007, while he was proceeding to Kalashetra Road near the Pillaiyar Temple junction a share auto bearing Reg.No.TN 07 AE 8618 crossed him and stopped and eight persons, including the detenu were in it. Four of them got down from the share auto. The associates of the detenu, Vijayakumar and Arul inserted hands into the shirt pocket of the complainant and took away cell phone and cash of Rs.200/- and threatened to kill him. When the detenu and others got into auto and tried to escape, the complainant raised hue and cry and hearing that again accused and his associates got down from the auto and pelted stones on him. The public who were at the spot noticing the atrocious activities ran for safer places out of fear of danger to their lives and properties. Based on the complaint given by him a case, as stated above, was registered and the detenu was arrested.

3.2. Apart from the above, the detaining authority also took note of the five adverse cases pending against the detenu, viz.,

i. Crime No.170 of 2007 registered on the file of Thuraipakkam Police Station for the offence punishable under Sections 294(b), 341 and 326 of IPC with reference to the occurrence said to have taken place on 24.3.2007;

ii. Crime No.73 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 392 and 397 of IPC with reference to the occurrence said to have taken place on 25.1.2007;

iii. Crime No.438 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 392 and 397 of IPC with reference to the occurrence said to have taken place on 11.5.2007;

iv. Crime No.478 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 395 and 397 of IPC with reference to the occurrence said to have taken place on 25.5.2007; and

v. Crime No.479 of 2007 registered on the file of Thiruvanmiyur Police Station for the offence punishable under Sections 395 and 397 of IPC with reference to the occurrence said to have taken place on 25.5.2007.

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3.3. The detaining authority, having satisfied that the detenu is indulging in activities which are prejudicial to maintenance of public order, passed the impugned order.

4. Heard both sides. We have perused the materials produced before us.

5. The main contention put forth by the learned counsel for the petitioner is that in the Special report dated 15.6.2007, the sponsoring authority referred to four cases said to be pending against the detenu, viz., Crime Nos.73 of 2007, 381 of 2007, 478 of 2007 and 479 of 2007, but there is no such Crime No.381 of 2007 pending against him and the detaining authority has not applied its mind to the above fact by seeking clarification of the same from the sponsoring authority before passing of the detention order.

6. Concededly, in the order of detention five adverse cases were stated to be pending against the detenu, viz., Crime Nos.170 of 2007, 73 of 2007, 438 of 2007, 478 of 2007 and 479 of 2007, but nowhere a reference is made to Crime No.381 of 2007, which is stated to be pending against the detenu as per the special report dated 15.6.2007. When there is such contradiction in the crime number referred to, the detaining authority ought to have sought for clarification from the sponsoring authority. Non appreciation of the said vital fact vitiates the order of detention.

For the reason aforesaid, the detention order is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 16.6.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

sasi

To:

1.The Secretary to Government(Home)
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

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2.The Commissioner of Police
Egmore, Chennai-8.

3.The Public Prosecutor
High Court, Madras.

4. The Superintendent,
Central Prison, Puzhal, Chennai.

5. The Joint Secretary to Government,
Public (Law and Order)
Fort St.George, Chennai -9.

H.C.P.No.1143 of 2007

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